

STATE OF ALASKA

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

ENFORCEMENT REPORT



FY 2001-2003

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Alaska Department of Environmental Conservation

Enforcement Report Fiscal Year 2003



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1. Overview of Enforcement Process

I. Overview of the ADEC Enforcement Process

INTRODUCTION:

Alaska is a land of great opportunity and has a very unique environment. Its landmass is approximately 570,373 square miles, which is equivalent to one-fifth the size of the continental U.S. and over twice the size of Texas. Alaska has 3 million lakes, over 3,000 rivers and more coastline (47,300 miles) than the entire continental United States.

Because of its generous compliment of natural resources and natural wonders, residents, tourists and industry are attracted to this great land. Although Alaska is the largest state in the union, it has one of the smallest populations at only about 640,000 residents.

The primary industries of Alaska include oil, commercial fishing, tourism, mining, timber and agriculture. Because of its enormous size, remoteness and climatic conditions, conducting business in the 49th state can be challenging. Equally challenging, is the task of improving and protecting our natural resources, the environment, the public health, and the public's overall economic and social well-being. The Alaska legislature has delegated the enforcement of laws governing the protection of water, land and air quality to the Alaska Department of Environmental Conservation (ADEC).

The department believes there are six essential elements of a good regulatory program:

1. unambiguous statutory authority,
2. documented basis for concern,
3. protective standards,
4. rational regulatory scheme,
5. documented compliance, and
6. enforcement.

Enforcement Policy:

The department's vision and policy for ensuring compliance is described as:

"The people and industries that operate in our state have both the corporate conscience and the technical ability to work with us on constructive solutions to basic environmental management and public health issues. We anticipate, collaborate, negotiate, educate and communicate to address the most important environmental and public health risks to Alaska and Alaskans. Investigation, legislation, regulation and litigation are available tools, but not the first tools of choice."



1. Overview of Enforcement Process

COMPLIANCE TOOLS:

ADEC uses various tools or methods to ensure compliance with the environmental laws and regulations. Depending on the willingness and awareness of the regulated business or individual, one tool may be more suited than another.

Education:

Education is offered by most programs to provide the regulated community with a clear understanding of the regulatory requirements. Some programs offer training classes to help those regulated to understand how to meet the conditions for compliance. Often advertisements are placed in the media to educate the public on special environmental or health concerns and what one can do to avoid becoming a violator. The department also offers other types of education including videos, brochures and interactive web pages.

Technical Assistance:

Although ADEC no longer has a formal Compliance Assistance Program, technical assistance is made available to those who would seek and benefit from guidance. The technical staff within each program will answer questions, interpret regulations and give advice where appropriate.

Administrative and Civil Enforcement:

Although the vast majority of the regulated community attempts to comply with the environmental laws, there are some who will not take the initiative to comply, or attempt to avoid the cost of lawful compliance, and therefore enforcement is critical tool. Enforcement is used to ensure the existence of a "level playing field" for those who expend the resources to comply with the laws. For this reason, ADEC is committed to maintaining a regulatory staff of well-trained inspectors and enforcement officers.

Noncompliance and violations are discovered in several ways: citizen complaints, referrals from other agencies, inspections, and self-reporting. When the regulatory staff discovers violations during inspections or self-reporting, the issues are normally addressed through administrative remedies to help return the entity to compliance. A Compliance Letter may be sent to address minor violations, and Notice of Violation (NOV) may be used to address more serious violations. The purposes for the NOV and the Compliance Letter are to provide formal notice to the respondent that ADEC believes a violation has occurred, and explain what is required to return to compliance. In addition to the NOV, other administrative, civil and criminal enforcement tools are discussed in Section II of this report. Recently the ADEC Drinking Water Program received administrative penalty authority from the Alaska Legislature. At the writing of this report, the Drinking Water Program had not yet started to access administrative penalties.



1. Overview of Enforcement Process

Criminal Enforcement:

When polluting or environmentally harmful conduct becomes intentional, knowing, or in some instances reckless, the violations are considered criminal, and are referred to the Statewide Environmental Crimes Unit (ECU) for investigation and prosecution. Most referrals for criminal enforcement are routed from the regulatory staff through their division director to the Chief Investigator of the Environmental Crimes Unit. The allegations are investigated, and if determined to be credible, the actions are forwarded to the Environmental Crimes Unit Prosecutor. Only about 6% of the complaints reported to ADEC result in criminal investigations being conducted by the ECU.

The Environmental Crimes Unit is comprised of three criminal investigators from the Department of Environmental Conservation, and one Assistant Attorney General from the Department of Law. The investigators are state peace officers with traditional law enforcement backgrounds, and advanced training in environmental crimes investigations. They conduct criminal investigations, execute warrants, and to do all things necessary and customary for peace officers duly appointed by the state. The Assistant Attorney General is a prosecutor with the Office of Special Prosecutions & Appeals, and has statewide jurisdiction to prosecute environmental cases. The prosecutor is also cross designated as an Assistant United States Attorney with authority to prosecute in U.S. District Court.



1. Overview of Enforcement Process



2. Enforcement Tools

II. Enforcement Tools

A) ADMINISTRATIVE AND CIVIL REMEDIES

Administrative remedies are non-judicial enforcement tools "administered" by the agency. These tools are less formal and outside the judicial system, generally simpler and less involved than judicial remedies, which usually involve the courts and often take months or years to process. Administrative remedies usually require the violator to agree to pay a civil assessment and reasonable agency costs and perform the necessary acts.

1. Notice of Violation (NOV): A Notice Of Violation (NOV), is not an order but rather a mere notice to a person that a violation of the statutes, regulations, or permit condition occurred. The majority of enforcement work is started with the NOV. The NOV is issued when it is believed that formal notification is necessary to generate appropriate remedial response by the violator or to document a violation.

2. Nuisance Abatement Order: Under AS 46.03.800 and .810, ADEC can order a person to abate a water, air, or land nuisance. If the person neglects or refuses to follow the Nuisance Abatement Order (NAO), ADEC can charge them with a class A misdemeanor. AS 46.03.800(b) and .810(b). Note that under § 810(b), an "officer" of ADEC must order the abatement. The Attorney General's Office recommends that only peace officers designated by the Commissioner under AS 46.03.890 sign nuisance abatement orders under § 810. Historically, these abatement orders have been used rarely.

3. Compliance Order By Consent: A Compliance Order By Consent (COBC) is an enforceable agreement to resolve violations of environmental or health laws. The COBC is usually faster than the Compliance Order or any of the judicial enforcement tools to obtain. The COBC is often utilized when the violator agrees to perform certain task in order to operate while coming into compliance or conducting remediation and cleanup. The terms and conditions of a COBC are simply negotiated between the DEC and the violator with the assistance of an Assistant Attorney General.

4. Compliance Orders: A compliance order (CO) is a unilateral, non-judicial enforcement tool which establishes a step or series of steps that the violator must undertake in order to abate a violation. Executed as a Department Order, the department then refrains from judicial action unless additional violations occur or the terms of the compliance order are ignored by the responsible party. Compliance orders are very similar to the COBC, except that they are not consensual.



2. Enforcement Tools

5. Permit Revocation or Modification: While many may not consider permits a part of enforcement, in fact they can be the focus for very effective enforcement. A member of the regulated community who requires a permit to operate will pay close attention when told that continued refusal to remedy a problem will result in a permit revocation action by the Department. A violation of a term or condition of a permit issued by the Department is in and of itself both a potential civil and criminal violation.

6. Notice of Closure of Retail Food Establishment: The Notice of Closure is an administrative enforcement tool that is somewhat similar to the Permit Revocation or Suspension. It is usually applied to food service establishments when they are operating without a valid permit, or they are operating in violation of 18 AAC under circumstances that may pose an imminent health threat to the public. Once the Notice of Closure is issued, the respondent is required to close the facility and cease all food operations immediately. If the respondent disagrees with the closing of his/her establishment, he/she can file for an appeal within 10 days after receiving the Notice of Closure. Further, at anytime the respondent may apply for re-inspection and reinstatement of his/her permit.

It is recommended that you coordinate with your supporting AAG prior to issuing a Notice of Closure. *18 AAC31.905, 18 AAC31.940*

7. Consent Decrees: Consent decrees are very similar to COBC's except that the consent decree is filed in Court and, once approved by the Court as an agreed upon settlement, enforceable as a Court Order. A Consent Decree requires the initiation of a court action by the Attorney General's Office through the filing of a civil complaint. The Consent Decree can be filed at the same time the complaint is filed. Or, a consent decree can be filed at any point after filing the complaint and before final judgment by the court. Consent Decrees can include stipulated penalties, response actions, cost recovery provisions and payment of damages and civil assessments by the violator.

8. Subpoena Powers: The Department is empowered to issue administrative subpoenas to compel the attendance of witnesses and the production of accounts, books and other documents. This power enables the Department to conduct investigations into whether a violation occurred and to gather additional evidence of a violation. The Commissioner of DEC has delegated subpoena powers to several program managers within the Department. The subpoena can be signed and faxed, sent by certified mail, or hand-delivered. If a person fails to comply with a subpoena, an Assistant Attorney General may seek enforcement by the Court under AS 44.62.590.

9. Emergency Orders: Emergency orders are extraordinary and powerful tools, as they temporarily abrogate the rights of the person upon whom the order is served. Emergency Orders must be signed by the Commissioner. The emergency order can be contested, but must be



2. Enforcement Tools

complied with by the violator until they are relieved of that obligation by a court.

Emergency orders are issued when a situation poses an immediate and serious threat to the public health and safety, or the environment. The emergency order is issued only in bona fide emergency situations. The violator who has received an emergency order may request a review hearing within 15 days of the effective date of the order.

10. Civil Suits: Civil actions may only be filed by an Assistant Attorney General representing the Department. There must be sufficient evidence available to prove the case in court. If the violation has not been documented, the case will probably be considered unacceptable and returned for further investigations.

11. Temporary Restraining Orders and Preliminary Injunctions: Preliminary injunctions and temporary restraining orders (TRO) are extraordinary court orders sought by the Department before trial for the purpose of protecting the public health or the environment from irreparable injury. The court can mold these orders to fit the unique circumstances of each situation. The court may require that certain actions be taken by the defendant, that certain standards be met, or that certain acts not be performed during the period before a trial can be held on the issues of the case.

12. Permanent Injunctions: Once the emergency is past, if there has been a ruling in favor of the ADEC on either a TRO or a preliminary injunction, ADEC may request a trial on a permanent injunction. The TRO or preliminary injunction may remain in effect until the trial is over. The outcome of the trial will determine whether the temporary injunction is dissolved or made permanent. At that trial both sides may present all relevant evidence. If the court rules for DEC, then a permanent injunction will be issued.

13. Liens: A lien under AS 46.08.075 is a document creating an interest in real or personal property that is filed in the recording district where the real property is located and is a public record. Liens are limited to securing the State's claim for reimbursement of state money spent to monitor or clean up an oil or hazardous substance when the liable party refuses or is unable to reimburse the state. The purpose of a lien is to secure the state's reasonable reimbursable cost and to place the world on notice that there is a claim against a certain piece of real and the personal property by the state.

14. Suits for Damages: Suits for damages are the kind of legal proceedings most of us are familiar with. These cases involve a request for payment of money to the DEC as a result of some harm caused by the defendant. All suits for damages require that an AAG handle the entire proceeding, including the drafting, signing, and filing of all documents with the court. Damages is one of the factors in computing a civil assessment under AS 46.03.760.



2. Enforcement Tools

15. Settlement Agreements: Settlement Agreements are negotiated and approved by the Attorney General's Office in consultation with the Department. A settlement agreement is a legally binding contract between a violator and the State to settle an action before or after filing a civil complaint. Settlement Agreements are generally used when further remedial actions are unnecessary to resolve a case and when the case does not warrant the filing of a consent decree.

B) SUPPLEMENTAL ENVIRONMENTAL PROJECTS

A Supplemental Environmental Project (SEP) is an alternative tool used to resolve enforcement issues with violators. A SEP is a project that prevents pollution, reduces the amount of pollution entering the environment, helps to educate the public on environmental matters, or improves the quality of the environment through reclamation or other activities.

C) CRIMINAL ACTIONS

In situations where proof of the occurrence of a violation is very strong, and at least criminal negligence has occurred, and the identity of the violator is clear, criminal charges may be contemplated. In criminal cases, fines can be assessed by the court and violators (other than corporations) can be imprisoned. While ADEC environmental crimes are punishable in Alaska as misdemeanors, it is not unusual for traditional criminal felony offenses to be committed in conjunction with the environmental offense. An example is the hazardous waste disposal contractor who illegally dumps the waste he has agreed to legally process. This individual has committed environmental offenses, and may have also committed fraud against the company with which he contracted.

Environmental crimes generally are classified as "A" Misdemeanors. Misdemeanors may be charged by filing an "INFORMATION," "CRIMINAL COMPLAINT," or a "UNIFORM SUMMONS AND COMPLAINT." Persons convicted of Class A Misdemeanors face up to one year in jail and/or \$5000 fine along with up to five years probation. The court may also order restitution of reimbursable costs. An organization, such as a corporation, convicted of a misdemeanor face up to a \$200,000 fine or two times the pecuniary gain.

Felonies are typically charged by Information or Complaint in the beginning. The defendant then has the right to be indicted by a grand jury. Once indicted the indictment becomes the charging instrument and replaces the original Information. In environmental crimes, the defendant is not usually charged first. Because there is less need to arrest an environmental defendant than someone who committed a serious assault, the ECU generally proceeds by indictment for felonies. Sentences for felonies range from \$5000 fines and no jail to life in prison without parole. For an organization, such as a corporation, maximum fines can easily



2. Enforcement Tools

approach half a million dollars in felony cases.

2. Enforcement Tools



3. Programs With Environmental Compliance Responsibility



III. Programs With Environmental Compliance Responsibility

A. DIVISION OF AIR AND WATER QUALITY

MISSION: *The Division of Air and Water Quality is to prevent, monitor, and control emissions into the air and water to protect the public health and the environment.*

The livelihood and well-being of all Alaskans depends on clean and abundant water which supports our bountiful fish and wildlife resources, supplies our domestic and recreational needs, protects our health, and sustains our economic diversity. The 1970 Clean Air Act established air quality programs to regulate air emissions for stationary, mobile and other sources, which pose a risk to human health and the environment. Alaska established its air quality program in the early 70's. Within this division, the responsibility for the protection of the state's air and water resources is divided into three major programs:

1. Air Non-Point Source & Mobile Sources Program – The Air Non-Point Source & Mobile Sources Program, formally Air Quality Improvement (AQI) Program, is responsible for mobile sources of air contaminants, air quality monitoring and radiation issues. The mission of the Air Non-Point Source & Mobile Sources Program is to protect public health and the environment by working to achieve ambient air quality standards throughout Alaska.

Mobile Sources Section

- Submit approvable Carbon Monoxide State Implementation Plans for Anchorage and Fairbanks to the U.S. Environmental Protection Agency.
- Manage the ethanol fuels (oxygenated fuels) program.
- Oversee and audit locally run inspection and maintenance (IM) programs.

Radiation Section

- Operate air quality monitors for radionuclide releases.
- Work with local governments to address impacts from previous radionuclide contamination at Pt. Hope and Amchitka.

Monitoring Section

- Maintain all "conformity" agreements to assure compliance with federal requirements.
- Submit approval PM-10 (particulate matter) plans for the non-attainment problems in Eagle River and Mendenhal Valley.
- Develop and administer agreements with local governments.



3. Programs With Environmental Compliance Responsibility

2. Air Permits Program – The Air Permits Program, formally Air Quality Maintenance (AQM) Program, is responsible for managing air pollution from industrial activities such as oil exploration and production, mining, forest products, electrical power production, paving, fish processing, municipal waste disposal, and open burning practices.

Compliance Section

- Develop air pollution regulations to meet the requirements of the Clean Air Act and Alaska Statutes.
- Monitor the compliance status of industrial facilities with air pollution regulations and standards by performing on-site inspections and using enforcement actions when necessary.
- Respond to public air pollution complaints.

Permit Section

- Issue construction permits to ensure that new and expanding facilities meet air pollution regulations and standards.
- Issue operating permits to facilities that require operators to monitor compliance with applicable standards.
- Issue general permits to help small businesses meet air pollution obligations.

3. Watershed Management Program – The Watershed Management program is responsible for the protection of Alaska's water resources. This program issues and certifies water quality permits, assures compliance with permits, assesses and restores polluted water bodies, monitors quality of surface and ground water throughout the state, develops water quality criteria of Alaska, and implements water quality protection and control programs for non-point source pollution, groundwater, and wetlands.

DEC uses a watershed protection approach to make more efficient use of state resources. This is a cooperative, geographically targeted effort to better manage, protect, and restore water quality in high-priority watersheds.

The federal Clean Water Act established the National Pollutant Discharge Elimination System (NPDES) to permit discharges of pollutants into U.S. waters by "point sources," such as industrial and municipal facilities. In Alaska, the U.S. Environmental Protection Agency issues NPDES permits, designed to maximize treatment and minimize harmful effects of discharges as water quality and technology improvements are made. DEC certifies that these permits will not violate the state's water quality standards. The Alaska Forest Practices Act and federal Clean Water Act also give the state authority to ensure that state water quality standards are met in timber harvest areas on public, private, and state lands. DEC also issues solid waste permits to regulate disposal of chemically treated tailings.

The Watershed Management Program is divided into two sub-programs; Watershed Development and Water Quality Protection.



3. Programs With Environmental Compliance Responsibility

Watershed Development Section

- Issue industrial and municipal wastewater permits.
- Review and approve wastewater treatment plans, eg. Stormwater Program.
- Monitor wastewater discharges and the water quality of waterbodies receiving the discharges.
- Approve mixing zones for discharges NOT meeting water quality standards at the end of pipe.
- Inspect industrial and municipal wastewater facilities.
- Certify U.S. Army Corps of Engineer dredge and fill permits in wetlands and navigable waters to ensure compliance with state water quality standards.
- Provide technical assistance for the design, installation, and operation of industrial and municipal wastewater systems.
- Review timber sale plans and conducts field inspections to ensure that timber harvest activities include water quality protection through implementation of "best management practices."
- Issue permits to mines for disposal of tailings and other wastes.

Water Quality Protection Section

- Provide technical assistance to department staff and project applicants by interpreting water quality standards regulations.
- Maintain the Alaska water quality standards to control and limit the amount of pollution introduced into state waters.
- Develop and implement statewide programs for non-point source pollution, coastal zone management, ground water and wetlands.
- Publish a statewide assessment of water quality every two years.
- Maintain the Alaska Watershed Monitoring and Assessment.
- Provide waterbody recovery and protection on a watershed basis.
- Provide technical and financial assistance to communities and resource agencies to control pollution from non-point sources.
- Provide assistance to local coastal planning efforts in the area of water quality and environmental protection.
- Coordinate ground water protection efforts with other department programs, state agencies and local governments.
- Coordinate efforts to study wetlands classification and delineation to provide good science for better wetlands permitting decisions.
- Provide storm water pollution prevention plan technical assistance and review.



3. Programs With Environmental Compliance Responsibility

B. DIVISION OF ENVIRONMENTAL HEALTH

MISSION *The Division of Environmental Health is Safe Water, Safe Food, and Healthy Communities. This mission is accomplished through the Environmental Health Programs listed below:*

1. Drinking Water and Wastewater Program – The Drinking Water & Wastewater program is responsible for ensuring the public water systems provide safe water and that domestic wastewater systems, public and private, safely and effectively treat and dispose of wastewater.

The Drinking Water and Wastewater Program is responsible for ensuring that water supplied for public consumption meets minimum health standards, including those of the federal Safe Drinking Water Act. Alaska has had primary enforcement responsibility of the federal program since 1978. Engineers and specialist staff provide guidance on design, installation and maintenance of drinking water, wastewater and other related facilities. They review project descriptions and plans for new and modified systems to ensure that standards are met to protect human health and minimize environmental degradation. Staff also provide access to office files on local public drinking water and wastewater systems, as well as technical assistance and workshops on regulatory, engineering and public health-related issues.

- Ensure that suppliers test drinking water as required for regulated contaminants.
- Review test results from public water suppliers and specify corrective measures where contamination is indicated.
- Approve new public water and wastewater systems and modifications to existing ones, provide design assistance, and certify installers for on-lot septic systems.
- Regulate minimum health standards and procedures for design, construction and operation of Alaska's 1,700 class "A" and "B" public drinking water systems.
- Implement a rural drinking water compliance strategy to assist rural Alaska water systems in providing cost-effective safe drinking water.
- Provide information about contaminated monitoring and sampling procedures for public water systems and/or private wells.
- Respond to complaints of contaminated or damaged drinking water wells and impacted watersheds.
- Maintain a statewide database with monitoring, compliance, and enforcement information on public drinking water systems.
- Respond to confirmed waterborne disease outbreaks, incidents of illness and overflowing sewage systems.
- Provide workshops on wellhead protection and source water assessments for public water systems.

2. Solid Waste Program – *The Solid Waste program works with municipalities, private businesses and industrial companies toward improved environmental management and*



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protection at Alaska's landfills.

Every day an estimated six pounds of garbage is thrown away by the average Alaskan. That adds up to more than 3.5 million pounds per day, and is nearly twice the daily average of the rest of the United States. Improper solid waste disposal can cause severe densities of disease-carrying mosquitoes, flies and rodents. It can pollute the air and drinking water sources and can attract wild animals such as bears and foxes.

Primary Services

- Prevent improper disposal of solid waste by issuing permits for the approximately 450 disposal facilities, including municipal landfills, landspreading of sewage sludge, disposal of contaminated soils, and land disposal of industrial wastes such as oilfield drilling muds.
- Annually inspect 150 landfills for compliance with permit conditions and regulations.
- Provide practical, hands-on advice to small towns and villages to help them improve community solid waste management.
- Work with owners of closed landfill sites to ensure that actions are taken to prevent contamination and protect public health and the environment.

3. Environmental Sanitation and Food Safety Program – *The Sanitation and Food Safety Program is responsible for safe food service, sale and processing (non-animal), food that is properly labeled and honestly presented, and sanitary public facilities.*

Among other things, the Environmental Sanitation and Food Safety Program carries out the following activities:

- Reviews plans and inspects facilities, issues permits and approvals, investigates complaints regarding public facilities and foodborne or waterborne illness, and responds to product recalls.
- Inspects over 6,000 public facilities of 11 types statewide: permanent and temporary food service facilities and bars; food stores and markets; warehouses; food processors; schools and playgrounds; public accommodations; pools and spas; barbershops/beauty shops; tattoo parlors; child care/preschool; adult residential care centers; and public showers and laundries.
- Provides technical assistance in epidemiological investigations and in design, operation and maintenance of pools and spas, school safety, indoor air quality, and food service operations.
- Ensures that foods processed, manufactured, (except seafood and meat/dairy), sold or served in Alaska are safe and wholesome.
- Protects the public from mislabeling, product substitution, and other economic frauds associated with food products.
- Ensures that public facilities maintain minimum standards of sanitation for Alaskans and visitors.

Nationwide, some 9,000 people die each year from food borne illnesses. With proper handling,



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temperature controls, and sanitation measures, these illnesses are 100-percent preventable. At-risk populations are increasing--the elderly, the young and those with immune deficiencies. This, coupled with the global nature of the food supply, means that monitoring for safety is both more important and more difficult.

In order to further protect the health and safety of Alaska citizens and our visitors, we have recently revised the Food Regulations for Alaska. Staff are located in Ketchikan, Sitka, Juneau, Cordova, Soldotna, Anchorage, Mat-Su, Tok, Fairbanks, Bristol Bay, Kodiak, Dutch Harbor, and by contract with the Norton Sound Health Corporation in Nome.

Seafood Processing and Development Section – The Seafood program works with shellfish growers and seafood processors to produce safe and wholesome seafood products that are properly labeled.

4. Animal Industries Program – *The Animal Industries program works to help livestock owners raise healthy, disease-free animals for use as human food and ensure meat, poultry and dairy products are properly processed.*

The Animal Industries Program ensures that slaughterhouses, meat processors, and dairy producers meet state and federal requirements for sanitation and good manufacturing practices, and that the products are wholesome. These rules have been established to protect the health of the consuming public. Through the inspection of dairy plants and farms in Alaska, this program helps ensure the continued sale of Alaska's dairy and meat products to the U.S. military and other public institutions.

Meat and Poultry Section

Permit and inspect all state meat and poultry slaughterhouses and processors, including reindeer operations, to ensure that state and federal sanitation standards are met and products are wholesome (and properly labeled.)

Dairy Sanitation Section

The program oversees producers and processors of milk and frozen desserts and inspect the sanitation conditions and equipment at the state's dairy farms and milk processing plants. Issue permits to dairy farms, processing plants, and haulers.

Animal Health Section

Monitor domestic livestock, including reindeer herds, to ensure maintenance of disease-free status. Provide technical assistance to the agricultural industry and the Department of Natural Resources regarding livestock disease control, including quarantines and/or destruction of diseased livestock.

Monitor and issue permits for import and export of domestic animals and control of animal-to-animal diseases, and importation of veterinary biologics.



3. Programs With Environmental Compliance Responsibility

4. **Pesticide Services Program** – *The Pesticide program works to prevent adverse effects on human health, wildlife and the environment due to the improper use, storage, or disposal of pesticides.*

Primary Services:

- Training and certifying pesticide applicators
- Marketplace inspections
- *Groundwater* and endangered species - protection from pesticide contamination
- Agricultural Worker Protection Standard (WPS)
- Restricted-Use Pesticide *Recordkeeping*
- Proper use, storage and disposal (pdf)
- Permits for aerial, aquatic, and public pesticide projects



3. Programs With Environmental Compliance Responsibility

C. DIVISION OF SPILL PREVENTION AND RESPONSE

MISSION: *Prevent, respond, and ensure the cleanup of unauthorized discharges of oil and hazardous substances.*

1. Prevention and Emergency Response Program – *To approve the cleanup of oil or hazardous substances by the responsible party and be prepared to clean up the spill directly if the responsible party is not available.*

The Prevention and Emergency Response Program is Alaska's primary response organization for oil and hazardous substance release. Program staff implement state law to protect public health and the environment from direct or indirect effects of spills, guard the safety of persons involved, undertake or confirm the satisfactory cleanup and mitigation of spill effects and restoration of damages, and recover state-incurred costs to the Oil and Hazardous Substance Release Prevention and Response Fund.

Primary Services:

- Lead the state's response to spills of oil and hazardous substances. Area response teams in Anchorage, Fairbanks, and Juneau also work as one team under the Incident Command System for large events.
- Oversee spill cleanup by the responsible party or take over cleanup when a responsible party is not found or is incapable.
- Evaluate spill impact, ensures containment and cleanup, and recovers cleanup and restoration costs from responsible party.
- Is currently developing and enhancing instate hazardous materials response team capability.
- Participate in government and industry response drills and exercises.
- Maintain the Federal/State Unified Plan and the ten Subarea/Regional Contingency Plans for Alaska.
- Develop spill reporting and notification procedures.
- Manage term contracts with spill response organizations.
- Train local personnel in at-risk areas throughout the state.
- Keep timely and accurate spill information.

2. Contaminated Sites Program – *To clean up sites contaminated by past improper disposal or discharges of hazardous substances.*

The program ensures that contaminated sites are evaluated and cleaned up in priority order, based upon risk to human health and the environment. Currently there are over 2000 sites on the contaminated sites database. Over 500 of these are identified as "high priority" sites based upon Alaska Hazardous Ranking Model. In most cases, the program oversees companies, federal agencies (such as the Department of Defense), or individuals who are cleaning up contamination found on their property. The program may conduct site cleanup when a responsible party cannot be identified or is unable to act. Cooperative agreements with the Department of Defense, the



3. Programs With Environmental Compliance Responsibility

U.S. Environmental Protection Agency, and the National Oceanic and Atmospheric Administration allow state oversight of federal cleanup projects.

- Identify and assess sites contaminated with oil or hazardous substances to determine their potential threat to public health and the environment.
- Ensure that contaminated sites undergo investigation and cleanup in a priority order, based on threat.
- Use term contractors to clean up high priority sites which lack a responsible party.
- Recover the state's costs of oversight or cleanup for responsible parties.
- Develop hazardous substance cleanup standards and operating procedures for all phases of contaminated sites work.
- Negotiate cooperative funding agreements with federal agencies to enable staff oversight of federal sites.
- Coordinate development of an annual budget proposal to clean up high priority contaminated sites where the state is the responsible party.
- To prevent and clean up spills from fuel storage tanks systems, and provide technical and financial assistance to tank owners and operators for tank upgrades, closures, and site cleanups.

3. Industry Preparedness and Pipeline Program – *To prevent spills from producers, transporters, and distributors of petroleum products and pre-stage privately owned spill response equipment and trained personnel in Alaska's industrialized areas.*

Alaska law requires oil spill prevention, financial responsibility, and oil discharge prevention and contingency planning for the oil industry. It also requires oil spill response action contractors to register with the state. The requirements apply to terminals and distributors of crude and refined oil products, oil pipelines and onshore and offshore oil exploration and production facilities.

- Assist the crude oil and refined oil industry in spill prevention, assuring that they have the personnel, equipment and financial resources to quickly respond to any spill and remediate its environmental damage.
- Review and approve about 140 oil discharge prevention and contingency plans for installations or operations across the state.
- Inspect facilities, pipelines and marine vessels to provide assistance and ensure compliance with requirements.
- Participate in oil spill drills with the regulated industries to exercise and demonstrate response readiness.
- Administer the statewide Financial Responsibility Program to ensure that oil operators maintain the financial resources to respond to any spill and mitigate environmental damage.
- Provide technical assistance and information to contingency plan applicants and the general public on spill prevention and response requirements.

3. Programs With Environmental Compliance Responsibility



4. Environmental Crimes Unit



IV. Environmental Crimes Unit

A. MISSION

The Environmental Crimes Unit (ECU) has statewide responsibility for the investigation and prosecution of environmental crimes.

Criminal enforcement is just one of several enforcement tools ADEC has available to assist in obtaining compliance from violators. The Department believes criminal enforcement is the enforcement choice of last resort. For that reason, this enforcement tool is reserved for the most serious violators.

The ECU is a very small unit comprised of three criminal investigators from the Department of Environmental Conservation, and one Assistant Attorney General from the Department of Law (DOL). The investigators are State of Alaska peace officers, with traditional law enforcement and advanced environmental crimes training, who are authorized to conduct investigations, collect evidence, execute warrants, and to do all things necessary and customary for peace officers duly appointed by the state. The Assistant Attorney General is a prosecutor with the Department of Law's Office of Special Prosecutions & Appeals, and has statewide jurisdiction to prosecute environmental cases. The prosecutor is also designated as an Assistant United States Attorney with authority to prosecute in U.S. District Court.

B. OPERATIONS:

The Environmental Crimes Unit is responsible for investigating and prosecuting the most egregious and or complex environmental crimes. In most cases however, the ECU does not work alone. When ECU opens a criminal investigation, it is a collaborative effort using the technical expertise of the ADEC regulatory staff, the law enforcement experience of the criminal investigators, and the prosecutorial authority of the Assistant Attorney General.

TYPE OF CASES INVESTIGATED OR PROSECUTED BY ECU:

- There appears to be at least criminal negligence involved.
- The violator is a repeat offender.
- Violation was intentional.
- Nature of harm to public health or the environment was serious.
- Violator attempted to conceal or cover up the offense.



4. Environmental Crimes Unit

C. INVESTIGATIVE SUMMARY

Table #1 depicts the number of investigations conducted by ECU during FY 2001-2003, as well as the source of the complaints leading to those investigations.

STATEWIDE ENVIRONMENTAL CRIMES UNIT INVESTIGATIONS CONDUCTED DURING FY 2001-2003							
SOURCE OF COMPLAINTS		COMPLAINTS REFERRED TO ECU			INVESTIGATIONS OPENED BY ECU		
		2001	2002	2003	2001	2002	2003
A D E C	Division of Air & Water Quality	12	33	72	10	22	69
	Division of Environmental Health	4	4	1	3	3	0
	Division of Spill Prevention & Response	8	6	4	7	4	3
Total Referred From ADEC Programs		24	43	77	20	29	72
Actions Initiated By ECU		15	14	16	1	2	0
Referred from Other Sources *		9	8	5	4	1	1
TOTAL		48	65	99	25	32	73

*Complaints are occasionally referred directly to the Environmental Crimes Unit from local, state or federal agencies. Those referrals are usually handled in the following manner:

- Some complaints are forwarded directly to the ADEC program having regulatory responsibility for the alleged violations.
- Some complaints are forwarded directly to the ECU prosecutor when sufficient evidence of criminal misconduct is documented in the referring agency's report, and no further ECU investigation is needed.
- Some complaints result in formal investigations being initiated by ECU to determine if a crime has been committed, identify the perpetrator(s), and to prepare a Report of Investigation for prosecution.
- Some complaints are request for assistance (RFA) from other agencies who retain the enforcement responsibility for the alleged environmental violation(s). In those cases, the investigative assistance is provided and the findings reported to the requesting agency.



4. Environmental Crimes Unit

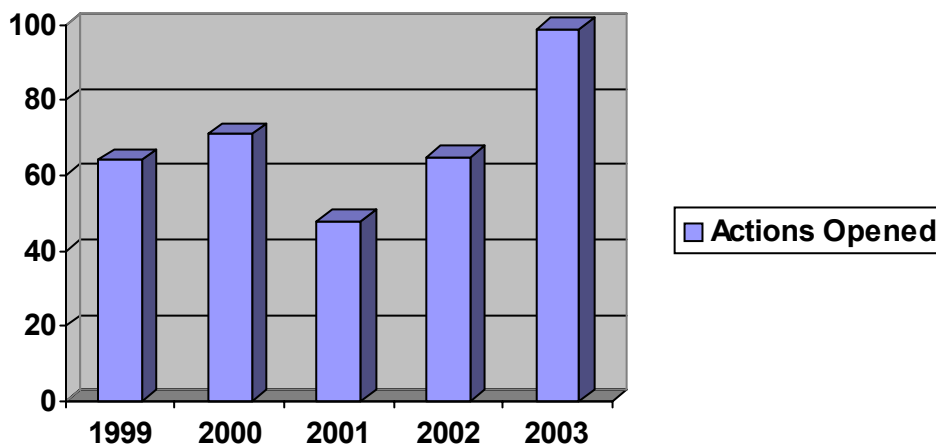
Table #2 depicts the number of complaints received by the ECU for investigation and how those complaints were resolved.

15-Dec-03

ENVIRONMENTAL CRIMES UNIT INVESTIGATION STATISTICS							
YEAR	Actions Opened	RESOLUTION OF REPORTED ACTIONS					Other
		Administrative	Civil	Criminal	Unfounded	Unresolved	
2003	99	6	0	39	2	26	26
2002	65	3	0	22	5	2	33
2001	48	14	1	7	2	1	23
2000	71	23	3	15	3	0	27
1999	64	7	2	11	9	1	34
Average	69.4	10.6	1.2	18.8	4.2	6	28.6

Legend:

- ADM Cases resolved through administrative remedies; NOV, COBC, Letter of Warning etc.
- CIVIL Cases resolved through civil remedies with civil AG section; civil settlements, consent decrees, etc.
- CRIM Cases resolved through criminal remedies; criminal complaints, uniform summons, etc.
- UNFD Cases determined to be unfounded, insufficient evidence to prove offense occurred.
- UNRES Cases unresolved and still under investigation or cases investigated but insufficient evidence to identify the violator.
- Other Request For Assistance from ADEC regulatory staff or other agencies; serving enforcement documents, assisting in interviews, collecting evidence, etc. or to document receipt of raw data, complaints reported to ECU but referred to ADEC or EPA regulatory staff for action.
- Year Fiscal year complaint was received, some cases are resolved in a different year than the year opened.



Complaints Reported To Environmental Crimes Unit FY 1999-2003



4. Environmental Crimes Unit

Table #3 depicts the number of investigations referred from the ECU investigations unit to the prosecutor and the dispositions of those cases. The FY reflects the year the action was referred to the prosecutor, not the year the investigation was opened.

ENVIRONMENTAL CRIMES UNIT INVESTIGATION AND PROSECUTION SUMMARY								
Fiscal Year	Cases Referred to Prosecutor	Number of Defendants in Cases	Cases Resulting in Convictions	Number of Convictions Against Individuals	Number of Convictions Against Corporations	Total Number of Convictions	Defendants Dismissed or Resolved Civilly	Defendants Pending Prosecution
2003	39	50	13	13	0	13	7	30
2002	20	25	15	14	1	15	4	6
2001	5	6	3	3	0	3	3	0
2000	14	22	10	5	6	11	10	1
1999	8	12	7	9	1	10	2	0



4. Environmental Crimes Unit

D. ENFORCEMENT TRAINING SUMMARY:

In the fall of 2002 the Alaska Department of Environmental Conservation implemented a credentialing program for all enforcement staff. Linked to the credentialing program were minimum training requirements for initial appointments, and renewal of credentials by the enforcement officers and inspectors.

Minimum Training Requirements: Prior to appointing a department employee to inspection or enforcement duties, he or she must have successfully completed at least one of the following training courses:

- a) ADEC 40 - Hour Enforcement Course - this is a 40-hour course of instruction on the ADEC enforcement tools and procedures.
- b) ADEC Basic Enforcement Training - this is a three day course of instruction that replaced the ADEC 40-Hour Enforcement Course.
- c) EPA Basic Inspector Course - this is a three-day enforcement course taught by the Environmental Protection Agency. It is designed to explain the basic inspection and enforcement tools used by environmental regulatory agencies.
- d) Basic Environmental Investigations - this is a three-day course of instruction, taught by the Western States Project, that provides an introduction to the investigation of environmental violations.
- e) Advanced Environmental Investigations - this is a two week (80-hour) course of instruction, taught by the EPA at the Federal Law Enforcement Training Center (FLETC), designed to teach advanced investigation techniques to environmental regulators and criminal investigators.

A waiver to the above training requirements may be considered if the nominee has other enforcement training or experience that would otherwise qualify him/her to perform the enforcement duties. Waivers and justifications should be submitted to the director of Information and Administrative Services Division for issuance of credentials.

Refresher / In-Service Training Requirements: For department employees assigned enforcement duties, training is an important component of maintaining competency. Court decisions, laws, and department policies that affect the way we perform our duties often change.

In addition to meeting the basic training requirements mentioned above, each person assigned to inspection or enforcement duties is required to attend at least four hours of in-service or refresher enforcement training every three years.

If a person returns to enforcement duties after an absence of more than one year, she/he must attend an in-service/refresher course, or one of the above mentioned courses.

The Statewide Environmental Crimes Unit is responsible for providing environmental enforcement training for the ADEC regulatory staff. Given the limited number of staff in the Environmental Crimes Unit, the task of providing quality enforcement training would not be possible without the assistance of the Western States Project. Alaska is not unique in this regard.



4. Environmental Crimes Unit

With the Western States Project, high quality training is possible because instructors from the various member states join together under the umbrella of the Western States Project to share their knowledge and resources.

The following training classes were provided during CY 2001 through 2003:

STATEWIDE ENVIRONMENTAL CRIMES UNIT ENFORCEMENT TRAINING CLASSES			
Course Title	Students	Dates	Type Students
Western States Project - Introduction to Environmental Enforcement	46	13-15 October 2003	ADEC Regulatory Staff & Department of Law Attorneys
Environmental Crimes Awareness Training - 2002 Enforcement Manual Updates	9	24 April 2003	ADEC Regulatory Staff
Western States Project - Environmental Case Development Course	74	10-12 June 2002	ADEC Regulatory Staff & Department of Law Attorneys
Environmental Crimes Awareness Training - Complaint Automated Tracking Systems (CATS)	10	26 October 2001	ADEC Regulatory Staff
Environmental Crimes Awareness Training - Enforcement Pitfalls, Administrative, Civil and Criminal Remedies	15	27 April 2001	ADEC Regulatory Staff
Environmental Crimes Awareness Training - Complaint Automated Tracking Systems (CATS) & Courtroom Testimony	20	9 February 2001	ADEC Regulatory Staff
Environmental Crimes Awareness Training - Complaint Automated Tracking Systems (CATS) & Courtroom Testimony	21	6 February 2001	ADEC Regulatory Staff
Environmental Crimes Awareness Training - For Law Enforcement Officers	30	20-21 February 2001	State and Local Law Enforcement Officers

5. Department Enforcement Summary

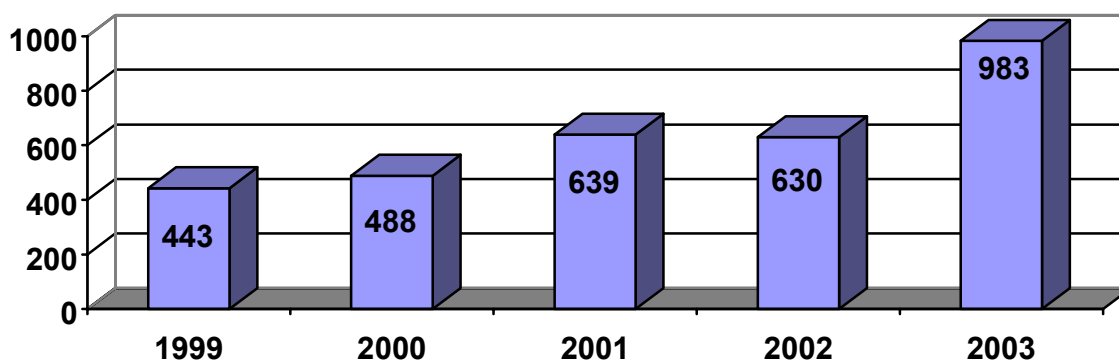


V. Department Summary

The below data summarizes the Alaska Department of Environmental Conservation's enforcement activities between fiscal years 1999 and 2003. This information was obtained from the Complaint Automated Tracking System (*C.A.T.S.*), which is the database used to track ADEC enforcement activities. The data in *C.A.T.S.* may only be partial information, since each ADEC program has responsibility for maintaining its official records. If there are questions concerning the program data, readers should contact the respective ADEC programs for their official records.

In reviewing the below data, it should be noted that in circumstances where the programs refer a complaint involving criminal enforcement to the Environmental Crimes Unit, a separate complaint is opened by ECU to documents and track the criminal investigation and subsequent enforcement action. Tracking of the original complaint is continued by the program to document any administrative or civil actions used to bring the violator into compliance. For this reason, complaints involving criminal enforcement may be documented twice, once by the referring program and once by the Environmental Crimes Unit.

COMPLAINT INVESTIGATIONS BY FY



December 23, 2003

Complaints documented in the *C.A.T.S.* database between 1 July 1998 and 30 June 2003.

5. Department Enforcement Summary



COMPLAINTS INVESTIGATED BY ADEC PROGRAMS

December 23, 2003

Table I. Summary of complaints investigated by ADEC programs during each FY.						
DIVISION / PROGRAM	1999	2000	2001	2002	2003	5 Yr Avg
AIR AND WATER QUALITY						
Air Non-Point Source & Mobile Sources	55	121	147	182	450	191
Air Permits Program	127	121	274	65	257	168.8
Water Shed Management Program	3	14	32	30	47	25.2
ENVIRONMENTAL HEALTH						
Food Safety & Sanitation Program	4	0	1	2	4	2.2
Drinking Water / Wastewater Program	94	56	40	37	29	51.2
Solid Waste Program	18	26	17	6	11	15.6
SPILL PREVENTION AND RESPONSE						
Industry Preparedness and Pipeline Program	3	19	6	7	8	8.6
Preparedness Emergency Response Program	59	53	57	28	72	53.8
Contaminated Sites Program	5	3	2	5	2	3.4
STATEWIDE PUBLIC SERVICE	4	4	5			2.6
Environmental Crimes Unit	64	71	48	65	99	69.4
TOTAL	443	488	639	630	983	636.6

ADEC COMPLAINT RESOLUTION

December 23, 2003

Table II. Summary of complaint resolutions involving alleged violations of ADEC regulations, either reported to, or discovered by the department.									
FY	COMPLAINTS	RESOLVED		UNRESOLVED		UNFOUNDED		OTHER	
1999	443	260	58.69%	67	15.12%	53	9.71%	63	14.22%
2000	488	281	57.58%	64	13.11%	64	13.11%	79	16.19%
2001	639	359	56.18%	102	15.96%	59	9.23%	119	18.62%
2002	630	380	60.32%	72	11.43%	56	8.89%	122	19.37%
2003	983	358	36.42%	454	46.19%	56	5.70%	115	11.70%
5 Yr Avg	636.6	327.6	51.46%	151.8	23.85%	57.6	9.05%	99.6	15.65%
Resolved = A violation was confirmed, the responsible party was identified, and corrective action has been initiated to bring the violator into compliance. Unresolved = Incident is under investigation to confirm a violation, or to identify the responsible party, or corrective action has not been taken. Unfounded = A determination was made that a violation of ADEC statutes or regulations did not occur as alleged. Other = Incident did not involve violations in which ADEC had a responsibility to enforce.									



5. Department Enforcement Summary

ADEC ENFORCEMENT ACTIONS

December 23, 2003

Table III-a. Summary of administrative and civil enforcement actions taken by the Alaska Department of Environmental Conservation during **FY 2001**.

ADEC DIVISION	NOV	NAO	COBC	CO	PR	SEP	CD	EO	CS
Air and Water Quality	142	1	16	0	0	2	0	0	13
Environmental Health	4	0	1	0	0	0	0	0	0
Spill Prevention and Response	17	0	2	0	0	1	0	0	2
FY 2001 Total ADEC	163	1	19	0	0	3	0	0	15

NOV= Notice of Violation; NAO= Nuisance Abatement Order; COBC= Compliance Order By Consent; CO= Compliance Order; PR= Permit Revocation; SEP= Supplemental Environmental Project; CD= Consent Decree; EO= Emergency Order; CS= Civil Referral;

Note: More than one enforcement action may have been taken in a single complaint.

Table III-b. Summary of administrative and civil enforcement actions taken by the Alaska Department of Environmental Conservation during **FY 2002**.

ADEC DIVISION	NOV	NAO	COBC	CO	PR	SEP	CD	EO	CS
Air and Water Quality	165	0	13	0	0	2	1	0	12
Environmental Health	7	0	1	0	0	0	0	0	4
Spill Prevention and Response	13	0	3	0	0	1	0	0	3
FY 2002 Total ADEC	185	0	17	0	0	3	1	0	19

NOV= Notice of Violation; NAO= Nuisance Abatement Order; COBC= Compliance Order By Consent; CO= Compliance Order; PR= Permit Revocation; SEP= Supplemental Environmental Project; CD= Consent Decree; EO= Emergency Order; CS= Civil Referral;

Note: More than one enforcement action may have been taken in a single complaint.

Table III-c. Summary of administrative and civil enforcement actions taken by the Alaska Department of Environmental Conservation during **FY 2003**.

ADEC DIVISION	NOV	NAO	COBC	CO	PR	SEP	CD	EO	CS
Air and Water Quality	416	0	7	0	0	0	0	0	5
Environmental Health	5	0	1	0	0	0	0	0	0
Spill Prevention and Response	12	1	2	0	2	2	0	0	4
FY 2003 Total ADEC	433	1	10	0	2	2	0	0	9

NOV= Notice of Violation; NAO= Nuisance Abatement Order; COBC= Compliance Order By Consent; CO= Compliance Order; PR= Permit Revocation; SEP= Supplemental Environmental Project; CD= Consent Decree; EO= Emergency Order; CS= Civil Referral;

Note: More than one enforcement action may have been taken in a single complaint.

5. Department Enforcement Summary



ADEC PENALTY STATISTICS

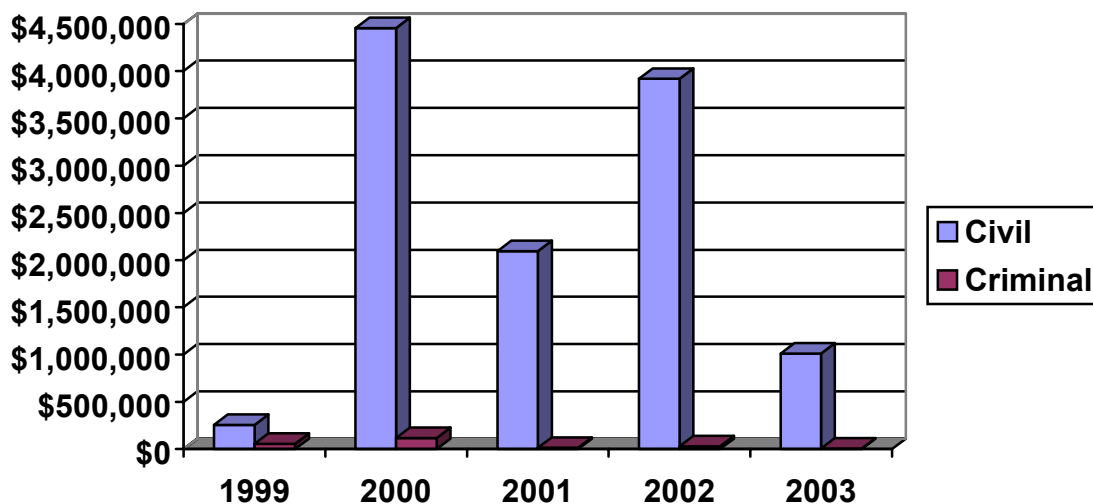
December 23, 2003

Table IV. Summary of criminal and civil penalties for cases concluded during each fiscal year.

FY	Criminal Fines & Civil Penalties			Jail Time (Days)		Probation (Years)
	Criminal	Civil	Total	Imposed	Suspended	
2003	\$5,500.00	\$1,010,000.00	\$1,015,500.00	0	0	5
2002	\$29,510.12	\$3,918,456.98	\$3,947,967.10	9,855	0	10
2001	\$13,500.00	\$2,096,065.00	\$2,109,565.00	0	0	5
2000	\$115,500.00	\$4,458,535.75	\$4,574,035.75	600	510	20
1999	\$55,175.00	\$255,760.00	\$310,935.00	11,025	160	27
Total	\$219,185.12	\$11,738,817.73	\$11,958,002.85	21,480	670	67

Note: Civil penalties also reflect criminal cases that were settled civilly.

TOTAL PENALTY INFORMATION



December 23, 2003